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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale) CC Docket 94-54
Obligations Pertaining to)
Commercial Mobile Radio)
Services)

COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
ON PETITIONS FOR RECONSIDERATION

The Cellular Telecommunications Industry Association ("CTIA")¹ respectfully submits these comments in support of the Petitions for Reconsideration in this proceeding.² Specifically, CTIA agrees that the Commission should reconsider its decision to apply resale requirements to bundled packages that include non-common carrier services.³

In its Order, the Commission declined to exclude from resale obligations bundled packages that include non-common carrier components.⁴ Thus, a CMRS provider must offer a

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular, broadband PCS, enhanced specialized mobile radio, and mobile satellite service providers.

² First Report and Order, CC Docket No. 94-54, FCC 96-163 (released July 12, 1996) ("Order").

³ See Petition for Partial Reconsideration of AT&T Corp. at 1-4, Aug. 23, 1996; Petition for Reconsideration and Clarification of the Personal Communications Industry Association at 12-16, Aug. 23, 1996.

⁴ Order at ¶ 31.

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reseller the same package of bundled service and mobile units (i.e., customer premises equipment or "CPE") that it offers to other large customers. The Commission adopted this broad resale obligation because it was concerned that "excluding from the resale rule all bundled packages that include non-Title II components would potentially offer carriers an easy means to circumvent the rule."⁵

There is no basis for the Commission's conclusion that exempting non-common carrier services and equipment from the resale requirement would encourage circumvention of the rule. As AT&T states in both its Comments and its Petition, even if a CMRS provider could withhold the provision of CPE or non-common carrier services from resellers, such resellers would still have an ample opportunity to compete against the common carrier services of CMRS providers to which resale obligations would still apply.⁶

It is now beyond dispute that the wireless equipment and enhanced services markets are extremely competitive.⁷

⁵ Id. at ¶ 31.

⁶ See AT&T Comments at 26 n.56 (June 14, 1995); AT&T, Petition for Partial Reconsideration at 3.

⁷ See Electronic Engineering Times, "A Software Approach to DECT Design," May 27, 1996 ("As the market for digital cellular and personal-communications-services (PCS) phones matures, the competition among component and handset manufacturers is becoming increasingly intense."); Cellular Business, "Restructuring the Workforce," April 1996 (citing a restructuring of OKI Telecom's workforce "[b]ecause of the economic pressures and fierce competition currently facing the portable industry").

There is no need -- or basis -- to impose resale obligations on competitive services and products.⁸ The Commission itself has acknowledged the competitive nature of the cellular equipment market.⁹ Since that time, the average price of a cellular telephone has dropped even further from \$400 in 1991¹⁰ to \$142 in 1996.¹¹ Furthermore, in contrast to the Commission's estimated 17 to 25 wireless equipment manufacturers that distributed cellular phones in 1992,¹² CTIA currently has 123 company members listed as equipment manufacturers, evidencing the competitive vibrancy of this market.¹³ Additionally, the availability of enhanced services from both wireline and wireless networks continues

⁸ See Order at ¶ 7 (stating that resale obligations were imposed on CMRS providers "in order to promote competition in these services").

⁹ See, e.g., Bundling of Cellular Customer Premises Equipment and Cellular Service, Report and Order, 7 FCC Rcd 4028, 4029 (1992) ("Cellular Bundling Order").

¹⁰ Id.

¹¹ "Yankee Group Announces Results from their 1996 Mobile User Survey," <http://www.yankeegroup.com/Surveys/wmsurvey.html>, May 31, 1996.

¹² Cellular Bundling Order at 4029.

¹³ With the advent of PCS and the continuing growth of the wireless industry, wireless equipment manufacturers also continue to enter the market. See, e.g., Electronic Buyers' News, "Samsung, Daewoo Enter Wireless Equipment Market -- Companies Will First Focus on South Korean Sales," Sept. 23, 1996; Electronic Buyers' News, "Qualcomm Wins Handset Bids, July 1, 1996 (noting Sony's entrance into the wireless handset market); FinTech Mobile Communications, "Philips and Amstrad Target the Consumer Mobile Market," May 16, 1996.

to grow.¹⁴ Given this competitive environment, a resale rule is not "clearly warranted."¹⁵ Moreover, the Commission lacks the requisite regulatory authority needed to require resale of non-common carrier components of a bundled offering. The resale obligation is based on Sections 201(b) and 202(a) of the Communications Act¹⁶ and, therefore, services subject to resale obligations must be subject to regulation under Title II of the Communications Act. Hence, non-common carrier services and equipment¹⁷ may not legally be subject to resale obligations.

Unnecessary restrictions on the resale of CMRS will hinder competition and disserve the public interest.

¹⁴ Computer III Further Remand Proceedings; Bell Operating Company Provision of Enhanced Services, Notice of Proposed Rule Making, 10 FCC Rcd 8360, 8384-85 (1995). See also Cellular Business, "New Law Brings New Name for EBS, Newnet," April 1996 (citing new partnership formed to provide wireless enhanced services, such as voice message notification, financial news and weather updates over the customer's cellular network).


¹⁵ Order at ¶ 14.

¹⁶ See Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261, 263 (1976).

¹⁷ See Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 FCC 2d 384, 439, modified, 84 FCC 2d 50 (1980), aff'd and clarified, 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983) (holding that the provision of CPE is not a common carrier service and, therefore, is not subject to regulation under Title II). To the extent that the Commission already has determined that restrictions on resellers' ability to buy packages of CPE and services on the same basis as other customers is unlawful, such determination is without a factual predicate and contrary to legal precedent. See, e.g., Cellular Bundling Order at 4032 n.48.

Additionally, the Commission does not have the authority to impose such restrictions on non-common carrier services. Accordingly, CTIA respectfully requests that the Commission reconsider its decision to impose resale obligations on CMRS providers' provision of non-common carrier services and equipment.

Respectfully Submitted,


Wendy G. Chow
Staff Counsel

Michael F. Altschul
Vice President and
General Counsel

Randall S. Coleman
Vice President,
Regulatory Policy
and Law

**Cellular Telecommunications
Industry Association**
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

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CERTIFICATE OF SERVICE

I, Wendy C. Chow, certify that on this 27th day of September, 1996, copies of the foregoing Comments of the Cellular Telecommunications Industry Association were either served by hand-delivery or mailed first-class mail upon the following parties:

* Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

* International Transcript Service
1919 M Street, N.W.
Room 246
Washington, D.C. 20554

Cathleen A. Massey
AT&T Wireless Services, Inc.
Vice President-External Affairs
1150 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Mark J. Golden
Vice President -- Industry Affairs
Personal Communications Industry Association
500 Montgomery Street
Suite 700
Alexandria, Virginia 22314


Wendy C. Chow

* Hand delivery